



Federal Communications Commission  
Washington, D.C. 20554

May 19, 2011

DA 11-906

## **Small Entity Compliance Guide**

### **Amendment of Part 90 of the Commission's Rules**

Second Report and Order  
FCC Number 10-36  
WP Docket No. 07-100

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)  
TTY: 1-888-TELL-FCC (1-888-835-5322)  
Fax: 1-866-418-0232  
[fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)

## **Objectives of the Proceeding**

This proceeding is part of our continuing effort to provide clear and concise rules that facilitate new wireless technologies, devices and services, and are easy for the public to understand. The Second Report and Order (2<sup>nd</sup> R&O) provides certain rule changes that will ease the licensing and administrative burden on certain licensees.

## **Compliance Requirements**

### Frequency Coordination Exemptions

Frequency coordination is generally required under the Commission's Part 90 Rules. Frequency coordination is the process of obtaining the recommendation of a frequency coordinator for a frequency that will most effectively meet the applicant's needs while minimizing interference to licensees already operating within a given frequency band. The purposes of the frequency coordination process are to ensure the quality of frequency selections; to expedite licensing, and to improve spectrum efficiency for the benefit of private land mobile users. This process is in the public interest and is consistent with the Commission's goal of reducing unnecessary regulatory burdens on licensees.

In the 2<sup>nd</sup> R&O the Commission granted certain exemptions from the coordination process for applications that no longer require frequency coordination and that can be filed directly with the Commission. For example, the Commission determined that where the only change is a simple reduction in authorized bandwidth, that action cannot adversely impact co-channel or adjacent channel licensees and thus should not be subject to frequency coordination. In addition, since most Private Land Mobile Radio (PLMR) licensees below 512 MHz will be required to migrate from 25 kHz operation to 12.5 kHz or narrower operation on their existing frequencies, we find that removing the frequency coordination requirement for such applications will facilitate the upcoming narrowbanding transition without disturbing the integrity of the frequency coordination process or the Commission's overall spectrum management objectives.

Additionally, the Commission determined in the 2<sup>nd</sup> R&O that applications seeking to modify licenses by lowering antenna height and/or decreasing power should be exempted from frequency coordination. First, this exemption would have no adverse impact on co-channel or adjacent channel licensees because frequency coordinators do not recommend changes to applications seeking such modifications. Second, the technical information is readily available in the Universal Licensing System (ULS) database. Such modifications are similar in their effect on other licensees to applications to eliminate frequencies or transmitter site locations, for which frequency coordination is no longer required.

Moreover, the Commission decided in the 2<sup>nd</sup> R&O that certain Commercial Mobile Radio Service (CMRS) operations can modify their licenses to change to PLMR operations without the need for frequency coordination because frequency coordinators do not make recommendations regarding changes between private and commercial status.

However, the Commission maintained the frequency coordination requirement for PLMR licensees that want to change their operations to CMRS because such conversions involve interconnection with the public switched telephone network, which typically results in much higher levels of airtime usage on a channel. Such increased airtime usage can affect other licensees, and

for this reason frequency coordinators should evaluate the implications of any proposed conversions to CMRS.

### Mobile Repeaters

Mobile repeaters are authorized to retransmit automatically on a mobile service frequency communications to or from hand carried transmitters. The Commission decided in the *2nd R&O* to delete Section 90.247(b) of the Commission's Rules, which limited Industrial/Business Pool frequencies below 450 MHz for mobile repeaters to only low power frequencies (where power is limited to two watts). As a result of the deletion, higher power frequencies may be assigned for use by mobile repeaters and associated hand-held units, when separate frequencies are assigned for that purpose. The Commission decided that on balance the benefits of greater flexibility, resulting from allowing mobile repeaters on full-power channels, outweighs the speculative possibility of harmful interference, particularly given that mobile repeaters typically are deployed for a limited period of time. We note that mobile repeaters require frequency coordination, and that the Commission's Rules require licensees to work together to solve any interference issues. The Commission noted that should mobile repeater operations under the amended rules result in interference to other users, it may revisit this issue in the future.

### Industrial/Business Pool Eligibility

Section 90.35 of the Commission's Rules permits entities engaged in, *inter alia*, "[t]he operation of a commercial activity" to operate on Industrial/Business Pool frequencies, and by its language does not expressly exclude state or local government entities from eligibility. In the *2nd R&O* the Commission concluded that Section 90.35 is flexible, and that activities such as the operation of a utility, golf course, etc., whether conducted by a government entity or a private entity, are "commercial activities" within the meaning of the rule. The Commission determined that state and local government entities should be able to be licensed for Industrial/Business Pool spectrum for use in commercial activities but not for public safety operations.

Further, the Commission decided in the *2nd R&O* that government surveying operations are permitted to utilize Industrial/Business Pool itinerant frequencies. The Commission determined that this change would enable government entities to utilize modern surveying equipment, which currently is manufactured to operate only on Industrial/Business Pool itinerant frequencies.

### Web Links

A copy of the Second Report and Order in WP Docket 07-100 is available at:

[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-10-36A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-36A1.pdf)

25 FCC Rcd 2479 (2010)

75 Federal Register 19277 (April 14, 2010) (summary)(effective date of rule changes May 14, 2010).